COURT NO. 3

Criminal Misc. Application no. 175 of 2002

Dilbagh Singh …….Applicant

Versus

1. State of Uttaranchal
2. Gurudev Singh ……..Respondents

Hon'ble Irhad Hussain,J.

Heard Sri P.M.N. Singh, learned counsel for the applicant.

Learned A.G.A. for the State.

Sri Dharamvir Sharma, learned counsel for respondent no.2

This application was filed u/s 4482 of the Code of Criminal Procedure, 1973 (for the short –Cr.P.C.) for quashing the order- dated 3.6.2002 passed by the Session Judge, Udham Singh Nagar in Sessions Trial no. 345 of 2001 State Vs. Dilbagh Singh, under sections 302/307/147/148/149 I.P.C. whereby an application purported to be u/s 311 Cr.P.C. was dismissed with the observations that all the three prosecution witnesses, namely, P.W. 1 Gurudev Singh, P.W. 3 Smt. Preetam Kaur and P.W. 4 Sukhdev Singh have been comprehensively cross examined on two dates on behalf of the defence and there are no cogent reasons to recall them for further cross-examination.

The application dated 3.6.2002, annexure 12 to the affidavit filed on behalf of the applicant, was filed with the allegations that P.W. 1 Gurudev Singh was examined by the Investigating Officer u/s 161 Cr.P.C. more than once and so was the case with other eye-witness P.W. 3 Smt. Preetam Kaur and the copies of the statements of every date ware not supplied to the accused and this fact came to the knowledge of the accused only when the statement of the Investigating Officer, P.W. 8 was lastly recorded in the trial and in this way the compliance of the mandatory provisions of sections 207/208 Cr.P.C. was not made thereby depriving the accused from valuable right to put forward their defence by

proper cross –examination of these witness in the light of their earlier statements made to the Investigating Officer and further that on the facts and circumstances of the case the defense had a legal right to seek recall of these witnesses for further cross examination. In relation to other eye witness, P.W.4 Sukhdev Singh similar contention was made although it appeared that his statement u/s 161 Cr.P.C. was recorded only once by the Investigating Officer. The application was moved after the entire evidence of the cross-examination had been produced and the trial was fixed for recording the statement of the accused u/s 313 Cr.P.C. The learned Sessions Judge after rejecting the application went on to record to the statement of the accused u/s 313 Cr.P.C. and fixed a date for defence evidenc in view of the opportunity so given to the accused.

The learned counsel for the applicant drew attention to the statement of the Investigating Officer annexure 11 and annexures 1, 2, and 3 of the supplementary affidavit which are the second, third and fourth statement of the complainant P.W. 1 recorded by the Investigating Officer on 4.02.2001, 23.2.2001 and 4.3.2001 respectively and submitted that the learned Sessions Judge had not taken into condideration the important aspect of matter that the copies of all statements u/s 161 Cr.P.C. were not supplied to the accused and arbitrarily rejected the application by the impugned order. It was also submitted that the learned Sessions Judge did not exercise jurisdiction judiciously in passing the impugned order and therefore, the same being neither proper nor passed on legal considerations is liable to be interfered with under the inherent powers of the court.

On the other hand zerox copies of the case diary was furnished at the bar by the learned A.G.A. to controvert the above submission and to bring home the point of view that the accused had been supplied the entire documents of the prosecution at the time of committal of the case to the Session and that there was no justification for the accused to seek recall of the witness for further cross-examination on false ground of non-supply

of the documents. The copy of the order sheet dated 25.9.2001 alongwith the committal order, annexure1, to the counter affidavit was brought on record to indicate that the accused had been supplied the copies of the documents of the prosecution as contemplated under the provisions of section 207/208 Cr.P.C. Having considered the submissions, it may be pointed out at the outset that the petition lacks merit and is liable to be dismissed.

The reasons are, firstly, that the allegation that the copies of the statements u/s 161 Cr.P.C. were not supplied to the accused is baseless and secondly because the defence had been afforded full opportunity to cross-examine the witnesses examined in evidence by the prosecution. The applicant with the supplementary affidavit dated 19.6.2002 had furnished the zerox copies of the statements of P.W. 1 Gurudev Singh recorded on 4.2.2001, 23.2.2001 and 4.3.2001 by the Investigating Officer. According to the applicant copies of these statements of the witnesses were not supplied to the accused at the time of committal of the case to the sessions. A bare perusal of these zerox copies of falsifies the claim of the applicant. On these statements at various places notings were made in Urdu, which were definitely not made before supply of the copies of these statements to the accused as is evident from the zerox copies of the case diary furnished on behalf of the State. On the statements recorded u/s 161 Cr.P.C. of the above witnesses no such notings in Urdu are available. The notings in all probabilities were made by the counsel for the accused or any of their pairokar after these supplied to the accused at the time of committal of the case to the sessions. This is also the reason that the applicant had been able to produce the photocopies of these statements as annexures to the supplementary affidavit. There is no dispute about the receipt of the copies of the statement of 26.1.2001, which was at the first instance recorded by the Investigating Officer. When the accused had been delivered copies of all the statements of various dates in respect of P.W.1 Gurudev Singh, there is reason to accept

the contention of the State that the accused had been delivered the copies of the documents of the prosecution on 25.9.2001 when the case was committed to the court of session and an endorsement of receipt of the copies of the documents was made by the accused on the order sheet of the said date, copy of which is annexure I to the counter affidavit.

The matter may also be considered by another angle. The applicant has furnished copy of the statement of P.W. 1 Gurudev Singh as recorded in the sessions trial, as annexure 8 to the affidavit. Perusal of the entire statement indicates that the witnesses had been cross-examined by the defence keeping in view the statements made by the witnesss to the Investigating Officer on various dates. For instance, reference may be made to the statement of the witness at paragraphs no. 16 and 17 pertaining to the names and identity to two accused who were not initially named in the F.I.R. The details about these two accused were given by the said witness to the Investigating Officer in his subsequent statement on 4.2.2001 and the cross examination of these witnesses thus show that the accused were possessed of the copies of every statement of th witness recorded u/s 161 Cr.P.C. In fact the accused have not been deprived of their valuable right of defence by withholding of the statements of the withnesses u/s 161 Cr.P.C. Considering the totality of the circumstances of the case, the contention of the learned counsel for the applicant about non-supply of copies of all the statements of the prosecution witnesses is not supported by the material on record.

As regards the contention that P.W. 4Sukhdev Singh also needs to be recalled for further cross-examination, there is no allegation that copy of his statement u/s 161 Cr.P.C. was not delivered to the accused. In the application dated 13.6.2002 no reason has been mentioned as to why the witness is required to be re-examined and further copy of his statement as recorded in the sessions trial has also not been filed to show that he could not be properly cross-examined on behalf of the accused. Considering this also, it cannot be said that there was need to recall the said witness for

further cross- examination by the accused. The learned Sessions Judge has in the facts and Circumstances of the case rightly pointed out in his order that full opportunity had been afforded for cross examination of the witnesses who have, in fact, been comprehensively cross examined by the defence and in this way no prejudice was caused to the defence.

On behalf of the applicant reliance has been placed on the decision of Allahabad High Court in the case of Riyazuddin and others Vs. State of U.P., 2002 AAC (Cr) 27. The facts of the case before the Allahabad High Court were at variance because the copies of some of the documents and statements to the witnesses recorded u/s 161 Cr.P.C. could not be supplied to the accused and it was accordingly held that for want of these documents and statements to the accused a fair trial could not be conducted. In view thereof, the order of the Sessions Judge was set aside and the witnesses were allowed to be recalled for re examination by the defence. As stated above in the instant case documents of the prosecution were not withheld from the accused and, therefore, there was absolutely no occasion for recalling of the witnesses who were cross-examined at length by the defence. As mentioned above, there are no cogent reasons to allow recall of the witnesses P.W.1,P.W3 and P.W. 4 and further that the accused have full opportunity to adduce evidence in defence, as has been directed by the learned Sessions Judge, and thus no interference is warranted in the impugned order. In short, the petition fails and is dismissed accordingly. The stay order dated 19.06.2002 stands vacated.

(Irhad Hussain,J.)

July 25, 2002
M.P.S.